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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 15.05.2025

+ **FAO (COMM) 128/2025 & CM APPL. 29710-11/2025**

NORTH EAST CENTRE FOR TECHNOLOGY
APPLICATION AND REACH

.....Appellant

Through: Mr Raghvender Mohan Bajaj, Ms
Sajal Awasthi, Advocates.

versus

M/S RHINO BAMBOO INDUSTRY

.....Respondent

Through: Mr Durga Dutt, Mr Pradeep Yadav,
Ms Ravleen Kaur Kalsi, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the above captioned appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], *inter alia*, impugning the order dated 25.02.2025 [**impugned order**] passed by the learned Commercial Court in OMP (COMM.) No.81/2021 captioned *M/s. Rhino Bamboo Industry v. North East Centre for Technology Application & Reach*, whereby the same was allowed.

2. The respondent had filed the aforesaid petition [being OMP (COMM.) No.81/2021] under Section 34 of the A&C Act impugning an arbitral award dated 15.04.2021 [**impugned award**], *inter alia*, on the ground that it was rendered by an arbitral tribunal [**Arbitral Tribunal**] comprising of a sole arbitrator that was unilaterally appointed by the



Secretary, Ministry of Science & Technology, Government of India – the concerned department under which the appellant operates.

3. It is the respondent's case that the Arbitral Tribunal has no jurisdiction to pass any award as it was comprised of the Sole Arbitrator, who was appointed unilaterally without the respondent's concurrence.

4. Briefly stated the relevant facts necessary to address the issue are as under: -

5. The parties had entered into Technology Development Agreement dated 22.03.2007, which was subsequently modified by a Supplementary Agreement executed on 12.05.2011 [**the Agreement**]. The appellant states that in terms of the Agreement, the appellant had advanced certain sums to the respondent, which were required to be repaid. However, the respondent had failed and neglected to perform its repayment obligations. In the aforesaid context the appellant invoked the arbitration by issuing a notice dated 23.03.2013 and proceeded for appointment of the Sole Arbitrator in terms of the Clause-XV of the Agreement.

6. The Arbitral Tribunal rendered the impugned award in context of the dispute that had arisen between the parties in connection with the Agreement.

7. The respondent had, after the Arbitral Tribunal was constituted, objected to the Arbitral Tribunal's jurisdiction on various grounds. However, the appellant states that no objection was raised on the ground that the arbitrator was unilaterally appointed at the initial stage of the



proceedings. However, during the course of the proceedings; that is, prior to the Arbitral Tribunal rendering the impugned award, the respondent did raise an objection on 14.12.2020 objecting to the appointment of the Sole Arbitrator on the ground that the Arbitral Tribunal had been unilaterally appointed. However, the Arbitral Tribunal dismissed the respondent's application on 30.01.2021 and, thereafter, proceeded to deliver the impugned award.

8. The learned Commercial Court following the decisions of the Supreme Court in ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.: (2020) 20 SCC 760*** and ***Bharat Broadband Network Limited v. United Telecoms Limited: (2019) 5 SCC 755*** allowed the said objection on the ground that the sole arbitrator was ineligible under Section 12(5) of the A&C Act.

9. The learned counsel for the appellant contended that it was not open for the respondent to raise any such objection for the reason that the respondent had participated in the arbitral proceedings till 14.12.2020 without raising any such objection. It is stated in the meanwhile, the appellant had also sought extension of mandate of the Arbitral Tribunal, which was not objected to on behalf of the respondent.

10. We find no merit in the appellant's contention that the respondent was precluded from raising any objection with regard to the unilateral appointment of the arbitrator after the impugned award was rendered.

11. Concededly, the respondent had raised the objection during the arbitral proceedings, which was rejected by the Arbitral Tribunal under



Section 16 of the A&C Act. Thus, the respondent could not be faulted for participating in the proceedings thereafter and taking its recourse against the impugned award under Section 34 of the Act.

12. The learned counsel for the appellant has relied upon the decision of the learned Single Judge of this court in ***Kanodia Infratech Limited v. Dalmia Cement (Bharat) Limited: Neutral Citation No.: 2021:DHC:3484***. However, he subsequently, withdrew the same as this decision has since been overruled by the Division Bench of this court.

13. The question whether a sole arbitrator unilaterally appointment by a party, is ineligible, is answered in the affirmative by this court in various decisions including ***Proddatur Cable TV Digi Services v. Siti Cable Network Limited: 2020 SCC OnLine Del 350***; ***Babu Lal & Another v. Choramandalam Investment & Finance Company Limited & Another: Neutral Citation No.: 2023:DHC:8195-DB*** and ***Kotak Mahindra Bank Limited v. Narendra Kumar Prajapat: 2023 SCC OnLine Del 3148***.

14. In view of the above, we find no merit in the present appeal. The same is accordingly, dismissed. The pending applications are also dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 15, 2025

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[Click here to check corrigendum, if any](#)